

REMARKS

The present remarks are in response to the non-final Office Action dated September 11, 2009. In the Office Action, the Examiner rejected Claims 1-17.

Claims 1, 4, 5, 6, 8, 13, and 16 are currently amended. Claim 2 is cancelled and incorporated into independent Claims 1 and 13. Claims 3, 7, 9, 10, 11, 12, and 17 are previously presented. Claims 14 and 15 are original. In addition, the Applicant hereby submits arguments in favor of Claims 1, 3-17. Accordingly, Claims 1, 3-17 are currently pending and are believed to be in condition for allowance.

TELEPHONE CALL WITH EXAMINER

The Applicant's Attorney encourages the Examiner to contact him to further discuss the application if the present claims are not allowed. The telephone number is 401-273-4446.

ONE MONTH EXTENSION OF TIME

Applicant requests a one month extension of time for filing a response to the Office Action. The required fee for the extension of time is submitted herewith.

CLAIM OBJECTIONS

Claim 4, 5, 6, 8, 16 were objected to by the Examiner for reasons stated in the present Office Action. The Applicant has currently amended Claims 4, 5, 6, 8, and 16 in accordance with the Examiner's suggestions. In light of these amendments, withdrawal of the objections to Claims 4, 5, 6, 8, and 16 is requested.

REJECTION OF CLAIMS UNDER 35 U.S.C. §102 (b)

In the Office Action, Claims 1-4, 7-9, and 11 were rejected under 35 USC §102(b) as being anticipated by Patel (U.S. Pat. No. 6,051,242). Also, Claims 1, 2, 7, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Leo (U.S. Pat. No. 4,734,333). Also, Claims 1-5, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tobias (U.S. Pat. No. 4,413,037). Also, Claims 1-3, 6-8, and 11 are rejected under 35 U.S.C. 102(b) as being

anticipated by Dowbenko (U.S. Pat. No. 3,897,295). Also, Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (U.S. Pub. Pat. No. 2003/0064232). Also, Claims 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel (U.S. Pat. No. 6,051,242).

The Applicant respectfully disagrees with the rejections of under 102(b) recited above for the following reasons cited below. It was well known at the priority date of the present application that intumescent coatings are coatings that swell as a result of heat exposure. Further, page 8 lines 11-13 of the Application as filed states that the intumescent coatings of the present invention must react under the influence of heat from a fire to form a protective insulating foam or char. Thus the claims of the present invention implicitly require a coating that reacts and swells on application of heat from a fire to form a foam or char.

In the present invention, it is the reaction of the at least one intumescent ingredient with other components in the coating (be it further intumescent ingredients or otherwise) that gives rise to a foam or char. Whilst a resin (polymeric component) could be a gas source, and an intumescent ingredient could also be a gas source, it does not necessarily follow that all gas source resins can be intumescent ingredients. This is because a gas source (such as a resin) cannot react to form a protective insulating foam or char without the presence of other intumescent ingredients such as an acid source (see page 8 lines 20-24 and page 9 lines 1-9 of the application as filed, which state that melamine (a resin) should be used together with an acid source and a carbon source). In other words, a gas source resin can only be classed as an intumescent ingredient if it reacts to form a foam or char.

Since none of Patel (US 6,051,252), Leo (US 4,734,333), Tobias (US 4,413,037), Dowbenko (US 3,897,295) nor Allen (US 2003/0064232) disclose a resin reaction to form a foam or char, the resin of these documents cannot be considered as an intumescent ingredient. Nor can the coatings disclosed in these document be classed as intumescent coatings. Thus none of these prior art reference can be novelty destroying for independent claims 1 or 13 or any of their dependent claims.

To further clarify, independent Claims 1 and 13 have been amended to further include former Claim 2. Claims 1 and 13 now include the element that “said at least one polymeric component comprises solid thermoplastic resin. Based upon the amendment and arguments above, Claims 1 and 13 and its relevant dependent claims are in condition for allowance.

REJECTION OF CLAIMS UNDER 35 U.S.C. §103 (a)

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Levine (U.S. Pat. No. 5,356,568). The Applicant respectfully disagrees with this rejection for the following reasons.

The Examiner also rejects claim 12 for obviousness, and that this rejection may be relevant to the line of argument presented above in support of amended claims 1 and 13. In this regard, a person of ordinary skill in the art would not look at Allen (US 2003/0064232) when considering the present invention, since Allen does not concern intumescent coatings and thus is in not in the relevant field. Even if the person of ordinary skill in the art were to look at Allen, which is denied, he wouldn't combine it's disclosure with that of Levine (US 5,356,568) since Levine relates to a very different type of coating (specifically the resin of Levine is not a solid thermoplastic, no monomeric component is present, and there is no radical reaction). Any attempt to combine the disclosure of Levine with Allen could arrive at any number of possible coating permutations, and any suggestion that a coating as required by claim 1 would inevitably result can only be based upon hindsight. Based upon the arguments above, the rejection of Claim 12 should be withdrawn. Furthermore, since Claim 12 depends from Claim 1, which is allowable, Claim 12 is also in condition for allowance.

PROVISIONAL DOUBLE PATENTING

Claims 1-8 and 12-17 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-16 of co-pending Application No. 11/722,347. Also, Claims 1-9 and 12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-20 of co-pending Application No. 11/722,348.

The Applicant has duly noted the provisional double patenting issues and will address them at later time, if necessary, when it is known what form the relevant claims of Application No. 11/722,348 may take. Note, U.S. Application No. 11/722,348 has not received a first Office Action on the merits.

CONCLUSION

Accordingly, Claims 1, 3-17 are currently pending and are believed to be in condition for allowance and the application ready for issue. Corresponding action is respectfully solicited.

The Director is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our Deposit Account Number 02-0900.

Respectfully submitted,
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